LEGISLATIVE COUNCIL

OF

INDIA

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1859

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Saturday, April 2, 1859.

PRESENT:

The Hon'ble J. P. Grant, Senior Member of the Council of the Governor-General, Presiding.

Hon. Lieut.-Genl. Sir James Outram,
Hon. H. Ricketts,
Hon. B. Peacock,
P. W. LeGeyt, Esq.,
E. Currie, Esq.,
H. B. Harington, Esq.,
and
H. Forbes, Esq.

NABOB OF SURAT.

THE CLERK brought under the consideration of the Council a Petition of Meer Mooeenooddeen Khan Bukshee Bahadoor of Surat against the repeal of any part of Act XVIII of 1848.

MR. LEGEYT moved that the above Petition be referred to the Select Committee on the Bill "to amend Act XVIII of 1848 (for the administration of the estate of the late Nabob of Surat, and to continue privileges to his family.")

Agreed to.

PILOT COURTS (BENGAL).

MR. CURRIE presented the Report of the Select Committee on the Bill "to amend the law for the trial of Officers of the Bengal Pilot Service for breach of duty."

EMIGRATION.

MR. PEACOCK postponed his motion (which stood in the Orders of the Day) for the first reading of a Bill "to amend the law relating to the Emigration of Native Inhabitants of India" till Saturday next. He wished to refer to certain papers which he had applied for to ascertain the effect of a law lately passed in the Mauritius.

EMIGRATION TO ST. VINCENT.

MR. PEACOCK moved the first reading of a Bill "relating to the Emigration of Native Laborers to the British Colony of St. Vincent."

He said that the object of this Bill was to extend to St. Vincent the provisions of Act XXXI of 1855 (relating to the emigration of Native Laborers to the British Colonies of St. Lucia and Grenada). After the passing of that Act, an Act (No. 702) was passed by the Legislature of St. Vincent, which was transmitted to the Home Authorities, with a request that the same powers should be given to St. Vincent as had been given to St. Lucia and Grenada. By some mistake, however, the measure did not comply with the requisitions which had always been acted upon and required by the Government of India for the protection of the coolies. One was that a cooly should never contract to serve beyond the term of three years. The St. Vincent Law enabled the contract to be for any period. The Governor drew attention to this, and the law was amended, but by some mistake *five* and not *three* years had been inserted. That also was contrary to the principle adopted, according to which three years was the time allowed, upon the expiration of which the cooly was allowed to contract for service with any other employer.

There were one or two other alterations in the Act which appeared necessary. The Secretary to the late Court of Directors, in a letter addressed to the Secretary to the Board of Commissioners for India on the subject of this Act, wrote as follows:—

"I have laid before the Court of Directors of the East India Company Sir George Clerk's letter, dated 26th Ultimo, enclosing a copy of an Act passed by the Legislature of St. Vincent, relating to the introduction of Emigrants into that Colony, and their regulation when introduced, and with reference to the intention of the Secretary of State for the Colonies, to call for certain amendments suggested by Her Majesty's Emigration Commissioners, requesting that the Board of Commissioners may be furnished with the Court's opinion on the course proposed to be adopted.

"In reply, I am directed to remark that it has been usual to make a reference to the Government of India before pronouncing an opinion on Acts of the Colonial Legislatures relating to the Emigration of Natives of India. But the Act of the Legislature of St. Vincent being based on that under which Emigration is at present carried on to Grenada, and the amendments proposed by the Emigration Commissioners tending to remove the slight differences which exist between the two Acts, the Court will not make any objection to the course proposed to be taken by Lord Stanley. They propose, however, to forward a copy of the correspondence and of the Act to the Government of India, and they would wish to be understood that that Government will be at liberty to suggest any

further alterations which they may think desirable, and that it rests with the Government of India to decide whether and when effect is to be given to the Act as far as relates to the territories under the administration of the East India Company."

The amended Act had not yet arrived. But inasmuch as this Bill would take three months to pass into law, and as it would not take effect without an order of the Governor-General in Council fixing a day from which the Act should come into operation, he (Mr. Peacock) proposed to move the first reading of the Bill.

Section I of the Bill proposed to extend Act XXXI of 1855 to St. Vincent. Section II provided that the Act should take effect from the day when the Governor-General of India in Council should notify in the Government Gazette that such Regulations had been provided and such measures taken as he might deem necessary for the protection of the emigrants during their residence in the Colony, and respecting their return to India.

The Bill was read a first time.

MARKETS.

MR. CURRIE moved the first reading of a Bill "for regulating the establishment of Markets." He said, the object of this Bill was to empower the Magistrates to interfere for the purpose of regulating the establishment of new Markets, or Hauts as they are called in the language of the country. He would endeavor to explain to the Council what had been heretofore the practice in such cases. The law was altogether silent on the subject. The only mention of hauts in the Regulations was in connection with the abolition of the Sayer Duties. By Regulation XXVII. 1793 of the Bengal Code, all market dues were abolished, and compensation was given to the landholders for the loss of the profits which they had derived from them. In consequence of this compensation resort to the hauts was declared to be perfectly free, and the landholders were restricted from demanding any payment for the use of the ground occupied by the hauts. This restriction, he supposed, did not extend to markets established since upon ground which was not so occupied at the time of the settlement. However that might be, new hauts were continually established, and were a source of profit to the owners. Such being the case, it was not to be supposed that a new haut could be established in the neighborhood of an old one without giving rise to disputes; and formerly the practice of Magistrates, when such disputes occurred, was to interfere for their adjustment, either by prohibiting the establishment of the new haut, or by fixing the days on which it was to be held, so as to interfere as little as possible with the old established one. This seemed to have been the recognized practice, for he found in the Constructions of the Nizamut Adawlut mention of an order of the Benares Court of Circuit in 1823 on the subject of a new haut; and in 1827 the Court of Nizamut Adawlut (Mr. Courtney Smith and Mr. Ross presiding) upheld an order of the Magistrate of Sylhet fixing the days upon which two rival hauts were to be held. But the Sudder Court thought proper, in 1830, to issue a Circular Order declaratory of the rights of zemindars to establish hauts on their own lands, and disallowing any interference on the part of the Magistrates, as ruled in the following extract from their proceedings:—

"The Court decided, on an appeal from an order of the Commissioner of Circuit of the 15th Division, that zemindars and the proprietors of land have a right to establish hauts or fairs on their own lands, and to hold them on any day that they think proper; and that it is not competent to the Magistrates to prohibit the establishment of a haut or fair, or to fix the day on which it may be held, on the plea of its interfering with the right of a neighboring haut-holder, or on any other ground."

Whether this order was right or wrong, it was not for him to say. It was certainly opposed to the previous practice, and to what might be called the common law of the country, and its consequences had been most pernicious. He had received within the last twelve months two communications from the Bengal Government relating to affrays and disturbances arising out of the establishment of new hauts, and illustrative of the evils which had resulted from tying the hands of the Magistrate. The

Magistrate was expected to prevent breaches of the peace, but he was restrained from settling the disputes by which alone such occurrences could be effectually prevented.

The first letter was from the Commissioner of the Nuddea Division of the 18th May 1858. He said :—

"In reply to your letter No. 884, dated 4th March last, with its enclosed petition from the Boses of Doorgapore, which I beg to return, I have the honor to quote as follows from the Jessore Magistrate's report on the statements made by the petitioner.

The new bazar and haut established by Judoo Bhoosun Deb Roy at Telendauparrah is at a distance of about half or three quarters of a mile from the Kedjoorah bazar; it has been established upwards of a year; it was the primary cause of all the disturbances between the Ghod Ghat concern and Judoo Bhoosun Deb Roy. It was, in my opinion, established solely with a view to damage the old bazar of Kedjoorah, and the haut days are the same as those of the old haut. * * * * * * * * *

"The law in its present state under its present construction recognizes the legality of thus establishing markets to the detriment and annoyance of the owners of old hauts, and such a proceeding almost invariably leads to serious breaches of the public peace." * * *

So far was the report of the Magistrate; the Commissioner went on to observe :—

"I have deferred submitting the above in order to have leisure to make a few remarks on the question of hauts generally. They are at present, as His Honor the Lieutenant-Governor knows, a fruitful source of harrassment to the marketing classes, and often of serious affray between the retainers of the haut owners. The Muthoorapore case, to which Mr. Molony refers, and in which Mr. Oram so nearly lost his life last year, grew from this source, or, to speak perhaps more correctly, from the restriction which superior authority have imposed on Magistrates in dealing with incessant disputes between rival haut owners.

"It is for the good of the country and of the public generally that there should be the freest competition between landowners for the custom of the marketing classes. Generally speaking an old-established haut must be either very badly managed, or must have become difficult or inconvenient of access before it will be deserted in favor of a new one established in the neighborhood, so that physical force has to be employed to divert marketers from the ordinary resort Similarly physical force is then engaged for their protection, and pitched battles frequently ensued. * * * * * * *

"A Magistrate generally has timely warning of the probability of a disturbance, and he may take precautionary measures by posting his police judiciously, or by binding down the owners of the hauts or their local managers, but under the ruling of the Nizamut Court now in force, he cannot strike effectually at the root of the danger which threatens, and cause the new haut to be held on a day different from that on which the old haut has always been held. * * * * * *

"No less than four heavy affrays arising from haut disputes, and attended in, I think, three cases with loss of life, occurred in Jessore alone in 1856."

The Muthoorapore case to which the Commissioner alluded was reported in the Nizamut Adawlut's Reports of Cases for January 1858. Forty-two defendants were charged with committing a riotous attack upon the Factory, attended with arson, the severe wounding of Mr. George Oram and slight wounding of Ramnaryun Sing and others, the plunder of property valued at Rs. 308-9 belonging to the Ghod Ghaut concern, and Rs. 405-4 belonging to Mr George Oram, and with resistance of the Police.

The Sessions Judge, after giving an account of a tumultuous attack upon the Factory, remarked—

"That the attack took place as above described, that a building used as an office was fired by the rioters, and that Mr. Oram was severely wounded by spears, sticks, and stones (evidence of the Civil Assistant Surgeon), cannot admit of the smallest doubt."

It seemed from the Report that there was some dispute about the sowing of Indigo, but the original cause of quarrel was the establishment of a new haut. The Sessions Judge said :—

"It appeared that some months previously a dispute had arisen between the Rajah of Nuldunga and Mr Oram regarding the erection of a new bazar by the former. The case being brought under Act IV of 1840 by the Magistrate, was by him decided in favor of Mr. Oram, but in appeal this decision was reversed, and possession adjudged to the Rajah. The Court of Sessions considered that, however the erection of such a bazar might be made for the purpose of annoyance, and however prejudicial to order, peace, and security might be the proximity of a new bazar to one of old standing, yet that neither in this state of the law nor in the particulars of the case was there anything to deprive the Rajah of the right to establish his new bazar on a piece of ground of which he had taken a lease for the purpose.

On the general subject the Sessions Judge made the following remarks:—

"Two other points force themselves on the notice of the Court, and I deem it right to advert to them, as illustrative of the difficulty of preventing or repressing agrarian outrage in this part of the country. The first is the state of the law regarding the erection of new or rival bazars close to bazars of long standing. There is nothing now to prevent any rich or powerful person from setting up a new bazar with the obvious intention of ruining or annoying an adversary. From this cause inevitably ensue attacks on the unoffending parties, in order to force them to desert the old bazar, and to purchase at the new one, retaliations from the opposite party, breaches of the peace, subversion of quiet and order, and protracted litigation. This state of the law, which is considered to be essential to trade or favorable to an abundance of the necessaries of life, is, I have no hesitation in saying, quite unsuited to the condition of this country, unsound in theory, and unsafe in practice. It is not once in ten times that a new bazar is opened to meet the advanced increased wants of the community, or to supply a mart essential for the necessaries of life. In most cases it is opened from purposes of revenge and annoyance, and we all know to what this leads in such a country as Bengal. But while such be the state of the law, the Court can only take care that, right or wrong, convenient or inconvenient, it shall be impartially carried out. The obvious remedy is for the Legislature to enact that new or rival bazars shall not be established within a certain distance of old ones without the consent of the civil authority. If a new mart be really wanted for the convenience of buyers and sellers, there could be no difficulty in procuring such consent. If it be established, as is so often the case, for unfair purposes, incompatible with peace and order, it should be peremptorily closed, or consent be refused for its establishment."

So much for the Jessore case. Disputes of the kind, however, were not limited to any particular District or to a single Province. He had been told that similar disputes frequently occurred in the North-Western Provinces, and they were certainly common in all the Districts of Bengal.

The other communication to which he had referred was a report from the Joint Magistrate of Bograh regarding a dispute about a haut at a place called Sultanpore. The Joint Magistrate said:—

"This haut, the property of Anundonath Chowdry and Kistomoni Debya, of Pergunnah Khatta, is a long established one, and one of the principal grain marts on the little Jooboona river. The quarrel arose from an attempt on the part of Huronath Chowdry of Dubulhattee in the Rajshahye District, to set up an opposition market at a place called Par Nowgaon on the west bank of the river, immediately over against Sultanpore. To effect this purpose it was necessary to entice the Mahajuns of the old haut to settle in the new one, and to compel the ryots who had been accustomed to attend the one to transfer their dealings to the other." * * * * *

A Mohurir and some Burkundazes were sent to keep the peace. The report continues:—

"The day before the next haut was to be held the Mohurir wrote to the Darogah to say that he had heard that Noyin Khan, Naib of the Akhira Cutcherry, and others on the part of Huronath Chowdry, had collected men secretly, and intended to force the people to attend their new haut. The Darogah went to the spot with an increased force, and no actual disturbance took place, though there were evident signs of an intention on Noyin Khan's part to compel the attendance of the ryots at his master's haut. * * * * *

"Meantime some ryots of Anundonath Chowdry had put in a petition to me on the 19th, complaining against Noyin Khan, Kisto Comar Buxi, and others, for seizing them and for carrying them to their haut, and on their refusal to sell their goods there plundering and beating them. After considerable delay Noyin Khan and some others surrendered, and were convicted by me and imprisoned.

"The argument that interference with the establishment of rival hauts imposes checks on the development of trade in the country, which is the only one I ever heard raised against such interference, shows an entire ignorance of the practical effect of competition between two contiguous hauts held on the same day. The ultimate result is in every case either that one haut destroys the other entirely, or that both are deserted for some more peaceable place of trade. So far is trade from being facilitated, that it comes completely to a stand-still whenever these quarrels arise.

* * * * * * *

"In the present instance the greatest injury has been inflicted on all parties. Both the shop-keepers and the cultivators all round have been prevented from transacting by the fear of being plundered, and although the police might prevent an actual outbreak in the place itself, much oppression has been occasioned without doubt by peons and lattials scattered over the path-ways leading from neighboring villages, who have waylaid the people and plundered them on the way into the haut. The actual sum taken from any one person in this way is so small, that they rather put up with the loss than complain."

Now he thought that a case had been clearly made out for the interference of the Legislature. Indeed,

when such facts were brought to its notice as those which he had just related—facts which had resulted solely from the defective state of the law—the Legislature would be inexcusable if it did not interfere. On the ground of principle there could be no objection to such interference. He probably would not be wrong in saying, that in no other country in the world, perhaps in no other part of this country than the Regulation Districts of the Bengal Presidency, were public markets established at the mere pleasure of the landholders without any intervention on the part of Government.

Such was certainly not the practice in England. The Council were doubtless aware that in England the establishment of Public Markets was a part of the Royal prerogative. He found it laid down in Blackstone that—

> "Markets and fairs, with the tolls thereunto belonging, * * * * can only be set up by virtue of the grant of the Crown, or by long and immemorial usage and prescription, which presupposes such a grant. The limitation of these public resorts to such time and such place as may be most convenient for the neighborhood, forms a part of economics or domestic polity; which, considering the kingdom as a large family, and the sovereign as the master of it, he clearly has a right to dispose and order as he pleases."

Such was the principle recognized in England, and it was certainly consistent with native opinions and practice in this country. He had not been able to ascertain exactly how the case stood in the other Presidencies. Circumstances there were so different, that the want which had been so strongly felt in the two divisions of the Bengal Presidency might not have been experienced at Madras and Bombay. He had, however, so prepared the Bill as to make it generally applicable. Any parts of the country for which it might be considered unsuited could easily be excluded from its operation.

The general purport of the Bill was this. It prohibited the establishment of a new market without the permission of the Magistrate. Public notice was to be given of any application to establish a market, and the Magistrate was to receive and enquire into objections, and to pass such orders as might be necessary to prevent breaches of the peace, and inconvenience to the buyers and sellers in the neighborhood. The orders passed by Magistrates would be appealable to the Commissioner of Police, whose orders, subject to the control of the local Government, would be final.

He proposed to extend the provisions of the Act to those markets which had been recently instituted—say within the last two years.

The Bill was read a first time.

VILLAGE WATCHMEN (BENGAL).

MR. RICKETTS moved that the Bill "to regulate the appointment, employment, and dismissal of Village Watchmen in the territories under the Government of the Lieutenant-Governor of Bengal" be referred to a Select Committee consisting of Mr. LeGeyt, Mr. Currie, Mr. Harington, and the Mover.

Agreed to.

MR. RICKETTS said, he had lately heard, in connection with the above Bill, that there was extensive litigation now going on in the districts of Hooghly, East and West Burdwan, and Beerbhoom, respecting the appointment and remuneration of Chowkeydars. As it was very necessary that the Council should have complete information as to the extent and nature of the litigation, and in what manner the cases were disposed of, he begged leave to move that the Clerk of the Council address a letter to the Government of Bengal, requesting that the Honorable the Lieutenant Governor would be good enough to direct the Judges of those districts to prepare and submit to the Council reports on the subject, and also that His Honor would direct the Superintendent of Legal Affairs to forward to the Clerk copies of any papers in his office connected with it.

MR. PEACOCK said, it was not his intention to object to the motion. But he thought it necessary to remark that there were doubts entertained in high quarters as to the power of the Legislative Council to address the Local Governments directly. He would remind Honorable Members of the debate which took place not long ago on the motion of the Honorable Member for Madras relating to Oaths. Probably the Lieutenant-Governor of Ben-

gal would not object, in a case of this kind, to comply with the requisition of the Council. But unless the Council strictly had the power, he (Mr. Peacock) thought that the better course would be to ask the Governor-General in Council in his executive capacity to procure the required information. He inclined to think that this Council had not the power to call for information from the local Governments.

MR. RICKETTS said, he did not see that there could be any doubt as to the power of this Council to call for information from any part of India. The Council stood in the same position as the Supreme Government in the Legislative Department formerly stood; and if they had the power to call for information, this Council also had the power. In fact, the power had already been exercised with regard to the Oaths question, and he had heard no objection to it. Although on such questions he was always inclined to bow to the opinion of his Honorable and learned friend opposite (Mr. Peacock), he should be very sorry to give up the power which was, he believed, vested in the Council.

MR. PEACOCK said, he did not think that in a case of this kind the information would be refused. But the question was, had they or had they not power to call for information? The Governor-General in Council in his executive capacity had such a power, but he doubted whether the Governor-General in the Legislative Council had the same power. As there were doubts on the subject, the better way would be to consider and determine the whole question.

MR. LEGEYT asked what powers the Governor-General in Council in his executive capacity had in such matters?

MR. PEACOCK said, that by the Charter Act the Governor-General in Council was empowered to enforce obedience to his requisition.

MR. LEGEYT.—Was not this Council the Governor-General in Council?

MR. PEACOCK.—This Council was the Governor-General in Council for the purpose of making Laws and Regulations only. If the question were litigated, he apprehended that it would be decided that this Council had not the power to call for information. He confessed that he had not accurately examined the question. But his impression at present was that, being a Council only for making Laws and Regulations, they had not the power to enforce orders.

MR. CURRIE said that, in all questions, but more especially in questions of such a nature as that now before the Council, the opinion of the Honorable and learned Member opposite (Mr. Peacock) must be allowed to carry great weight. Still he must say that he agreed entirely with the Honorable Member on his right, Mr. Ricketts. There could be no question that this Council was the Governor-General in Council for the making of Laws or Regulations only. But it could never have been intended that they should make Laws or Regulations which might prove inappropriate or inapplicable; and if in order to the framing of a Law or Regulation any information was found necessary, surely the Council must, from the very nature of its functions, possess the power of calling for it. If it came to a question of precedent, he would at once establish the precedent.

MR. GRANT said, the question was one of considerable importance. He must confess that, as then advised, he did not participate in the doubts suggested by the Honorable and learned Member on the right. He considered that there were not two Councils but one; that this Assembly was the Governor-General in Council, the Council when met for the purpose of making Laws being the same as when met for executive administration, with the addition of certain merely legislative Members. Although the constitution of the Legislative Council had been changed in this respect, it appeared to him that it was very much like the old Council sitting in the Legislative Department. He apprehended, therefore, that whatever the old Council, sitting in the Legislative Department, could have properly done, this Council could properly do. As to their legal power to call for information from the public, in order to assist them in their preparation of laws, he did not know how that matter stood, and the Council did not claim to exercise such a power. But as to their power to call upon public officers for such information, that was no more than used to be done for

merly by the Governor-General in Council sitting in the Legislative Department; and he (Mr. Grant) was sure that no public officer, high or low, would refuse to give this Council any such information when called upon. If he did refuse, he (Mr. Grant) did not think that any necessary orders could be passed by this Council, any more than formerly such orders could have been properly passed in the Legislative Department. But were such a most improbable case to arise, he had no doubt that the Governor-General in Council, sitting in the Executive Department, would pass proper orders. If therefore the question must now be decided, he should vote in favor of the motion. He would suggest, however, that in a matter of such importance the whole question might advantageously be referred to a Select Committee with a view to its being thoroughly discussed and definitively settled as to whether or not this Council had the power in question. But if the Honorable Member on his left pressed his motion, he (Mr. Grant) would vote for it.

MR. PEACOCK said, it was not his intention to oppose the motion. He did not see any objection to the call now proposed being made; he had no doubt the Lieutenant-Governor would comply with it. But as doubts were entertained on the general subject, the suggestion of the President seemed to him a very proper one and worthy of adoption.

MR. CURRIE said, that the question, or at least one very like it, had been for more than two years before a Select Committee, on the motion of the Honorable Member for Bombay.

MR. RICKETTS wished the question to be put to the vote.

The Motion was put and carried.

RECOVERY OF RENT (BENGAL).

MR. CURRIE gave notice that he would, on Saturday, the 9th Instant, move for a Committee of the whole Council on the Bill "to amend the law relating to the recovery of Rent in the Presidency of Fort William in Bengal."

The Council adjourned at noon on the Motion of Sir James Outram.

Mr. Grant

Saturday, April 9, 1859.

PRESENT:

The Hon'ble J. P. Grant, Senior Member of the Council of the Govr.-Genl., Presiding.

Hon. Lieut.-Genl. Sir J. Outram,
Hon. H. Ricketts,
Hon. B. Peacock,
P. W. LeGeyt, Esq.,
E. Currie, Esq.,
H. B. Harington, Esq.,
H. Forbes, Esq.,
and
Hon. Sir C. R. M. Jackson.

EMIGRATION.

MR. PEACOCK moved the first reading of a Bill "to amend the law relating to the Emigration of Native Inhabitants of India."

He said the Mauritius Government had lately proposed alterations in the law relating to the emigration of coolies. One proposal was to authorize contracts to be made in India for service at the Mauritius. According to the present law no contract to serve could be entered into by the coolie until forty-eight hours after his arrival in that Island. This was by virtue of an order of the Queen in Council, which had the force of law there. When a law was passed in India authorizing Emigration to the Mauritius, this was one of the terms contemplated by the Act of the Legislative Council. The working of this condition had, however, been found injurious not only to the Mauritius Planter, but also to the Emigrants. In a letter, dated June 30, 1858, the Governor pointed out the evils attendant upon that system. He wrote:—

"The allusions made in the correspondence now under reply, and in the report of Sir Frederick Rogers, to the Ordinances No. 15 of 1854 and No. 12 of 1855, induce me to take the present opportunity of entering more at large into the subject of the much vexed question that has been anxiously agitated here. With reference to the introduction of the 6th Clause of No. 12 of 1855, which gives the Immigrant, on his arrival in this country, the full and free selection of his own employer, notwithstanding he may have been expressly engaged in India, for the services of a particular Planter, by whom the whole expense of his introduction has been fully defrayed."

That Ordinance authorized the Immigrant, though conveyed to the Mauritius at the expense of one Planter, to